

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

JAMES A. SIMMONS,

Plaintiff,

v.

**PORTFOLIO RECOVERY
ASSOCIATES LLC and YVETTE M.
STEPHEN,**

Defendant.

**CIVIL ACTION NO.
3:11-cv-00280**

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

COME NOW defendants Portfolio Recovery Associates, LLC ("PRA") and Yvette M. Stephen ("Ms. Stephen"), by and through their undersigned counsel, and pursuant to Fed. R. Civ. P. 12(b)(6), hereby submit this Motion to Dismiss the Complaint of plaintiff James A. Simmons ("Plaintiff"). In support of their Motion, Defendants state as follows:

1. Plaintiff's Complaint is due to be dismissed because he has not met the minimum federal pleading standards set forth by Fed. R. Civ. P. 8. Plaintiff fails to affirmatively state that he did not sign a written contract with his original creditor that would permit assignee PRA to sue for the damages requested in the underlying state court lawsuit. Absent such an allegation, Plaintiff's Fair Debt Collection Practices Act ("FDCPA") claim related to the filing of a false Civil Warrant is due to be dismissed.

2. Moreover, Plaintiff fails to set forth any facts demonstrating why the affidavit executed by Ms. Stephen and filed by PRA is "false, deceptive, or misleading." Rather, Plaintiff makes guesses as to how the affidavit was created, but wholly fails to state why the affidavit is inaccurate. This is insufficient to permit Plaintiff to survive dismissal.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that this Court enter an order dismissing Plaintiff's Complaint, with prejudice.

Respectfully submitted,

s/ R. Frank Springfield

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Attorneys for Defendant
PORTFOLIO RECOVERY ASSOCIATES, LLC
AND YVETTE M. STEPHEN

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by Notice of Electronic Filing, or, if the party served does not participate in Notice of Electronic Filing, by U.S. First Class Mail, hand delivery, fax or email on this the 9th day of August, 2011:

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s/ R. Frank Springfield

OF COUNSEL